

ADDRESS OF SENATOR STROM THURMOND (D-SC) IN THE SENATE IN OPPOSITION TO THE SO-CALLED CIVIL RIGHTS BILL AND ADVOCATING PROTECTION OF THE RIGHT OF TRIAL BY JURY. *July 31, 1957*

Mr. President, the passage of this bill, H. R. 6127, would deprive American citizens of their fundamental right of trial by jury.

It would place a mortgage on the freedom of every citizen, marked "payable on demand at election time" to the Attorney General of the United States.

The statements I have just made are not in any way extreme interpretations of the power which would be placed in the hands of the Attorney General under Part IV of the bill when the powers of Part IV are combined with existing provisions of the United States Code.

Let me point out the basis on which I have made these statements.

Paragraph (c) of Part IV provides that:

"Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order..."

This provision would permit the Attorney General and his subordinates, the Federal District Attorneys of the United States, to secure injunctions and other restraining orders from the Federal district courts for the purpose of applying unjustified judicial controls on American citizens in connection with the holding of elections.

Under this provision, the Attorney General could institute such proceedings without the approval or the consent of the person the Attorney General was purporting to protect. Of course, if that person himself wished protection and felt that additional protection was necessary, he could, under the present laws, secure such protection himself by application to the court.

The purpose of paragraph (c) of Part IV of H. R. 6127 is more specifically to provide the Attorney General dictatorial control powers over elections than it is to provide protection for the individuals. This point is easily discernible when Part IV is



interpreted in the light of existing statutory provisions relating to contempt proceedings.

Section 401 of Title 18 of the United States Code specifies three bases on which a Federal judge has the power at his discretion to fine or imprison a person for contempt:

1. Misbehavior of any person in the presence of the court or so near thereto as to obstruct the administration of justice.

2. Misbehavior of any of the court's officers in their official transactions.

3. Disobedience or resistance to the lawful writ, process, order, rule, decree, or command of the court.

Section 402 and Section 3691 of Title 18 provide for the prosecution of criminal contempts committed against any lawful writ, process, order, rule, decree, or command of a federal court. These sections specifically provide that when such an act also constitutes a violation of an act of Congress or a law of a State, the person charged with such violation and such a crime shall be entitled to a trial by jury.

However, Section 3691 contains an important -- yes, a vital -- exception to the right of trial by jury. It provides:

"This section shall not apply to contempts...in any suit or action brought or prosecuted in the name of or on behalf of the United States."

Returning, Mr. President, to paragraph (c) of Part IV of H. R. 6127, the portion of Section 3691 which I have just quoted would give the Attorney General absolute power to deprive citizens of a jury trial in contempt cases simply by making the United States a party to any or every election dispute.

What is sought to be accomplished by Part IV of this bill is twofold:

1. To prevent jury trials by instituting civil actions in cases which, if any wrong doing has been committed, should be tried under our criminal laws.

2. In the event a contempt is proved to involve a criminal action to deprive the defendant of a trial by jury by making the United States a party to the case.



Mr. President, no explanation of this bill can alter the fact that it is specifically designed as a "force bill". Its purpose is to put weapons of force in the hands of the Attorney General which he could exercise arbitrarily. He could apply the force in some cases and withhold it in others. It would be a weapon to intimidate innocent people, not versed in the law as an Attorney General should be.

If H. R. 6127 were to be enacted, it would deprive people all over this country of the right of trial by jury, which is guaranteed in the Constitution and in the Bill of Rights.

It would not strengthen the rights of individuals. It would strengthen the bureaucratic power of the Attorney General of the United States. It would grant him license to meddle in every election held in every precinct of this Nation, if he so chose.

Mr. President, there is no question as to the power of a court to punish a contempt committed in the presence of the court, or so near thereto as to obstruct justice. Such authority must be vested in our courts to maintain respect for the administration of justice. From earliest times, the common-law courts have had the power to punish contempts done in their presence.

Through the years, the contempt procedure was gradually refined. In his review of The King v. Almon, Arthur Underhill states that Hale in his Pleas of the Crown cites an instance "...of a man attached by bill to answer to the King and a party for an assault committed on the plaintiff when he came to prosecute a suit in the King's Bench...and attachment by bill to bring the defendant before the court where the question was tried in the ordinary course of law... It would seem that in early times contemptuous conduct on the service of process was punished after conviction by a jury and not by summary procedure."

Even in cases of contempts done in the face of the court, there is some evidence that the person accused was accorded the right to trial by jury.

Holdsworth, in his History of the English Law, stated that:



"...All through the medieval period and long afterwards, the courts, though they might attach persons who were guilty of contempts of court, could not punish them summarily. Unless they confessed their guilt, they must be regularly indicted and convicted."

John Charles Fox, in an article in the Law Quarterly in 1909 entitled, "The Summary Process to Punish Contempt," expressed the view that the common-law courts followed a custom "perhaps down to the eighteenth century" of never summarily punishing contempts committed out of the presence of the court.

Contempt procedures established in courts of equity developed somewhat differently because of the impersonal nature of the Chancery in England. There were two main grounds on which a person might find himself in prison for contempt, according to The English Legal System by Radcliffe and Cross. They were neglecting a subpoena and failure to comply with a court order, such as to do some act, to pay money into court, or execute some document, etc.

Contempt procedures were brought into the processes of the common-law courts, after first having been established in the Chancery. Holdsworth cites two factors which contributed to this development.

He points out that, after the abolition of the Star Chamber and the jurisdiction of the Council in England in 1641, the King's Bench assumed this jurisdiction, and with it authority from the preceding bodies to punish contempts. At the same time, there began a gradual enlargement of the power of the court to convict and punish summarily without an indictment or the verdict of a jury.

Yet, Fox, in his article on The King v. Almon, asserted that he could not find an instance of a proceeding for contempt other than by indictment, information or action at law earlier than 1720. The King v. Almon is considered the land-mark case for the concept in England that contempts might be tried without a jury.

However, the judgment in this case was never officially handed down because of a technical error in the names involved. Still more important is the fact that, although the case was heard in 1765 -- 10 years before America broke away from England -- the case did not become precedent in England until 1844, more than a



half century after the United States Constitution had been adopted.

In the light of the historical background cited, it is significant that our Constitution and Bill of Rights, spelled out their guarantees of trial by jury.

Blackstone, that great English legal mind of the 18th Century, was delivering a series of lectures at Oxford University about the time the American Colonies were breaking away from Great Britain. He had a strong influence on jurisprudence in the United States. His Commentaries on the Laws of England were first published in 1765 as an outgrowth of his course at Oxford during the middle 1750's.

Perhaps one of the most forceful statements in history as to the importance of trial by jury is contained in the 23rd chapter of the third volume of the Commentaries.

This is what Blackstone had to say:

"...The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has been so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases!... It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. A constitution, that I may venture to affirm has, under Providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer, who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury."

At another point, Blackstone further declared his faith in trial by jury in these words:

"...A competent number of sensible and upright jurymen; chosen by lot...will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This, therefore, preserves in the hands of the people that share which they ought to have in the administration of public justice..."

Mr. President, the members of the Senate who are also members of the Bar have seen the wisdom of Blackstone's words operating many times in the courts of this nation. The principle of trial by jury must continue to protect the liberty of every citizen as our



forefathers intended it to do when they so provided in the Constitution.

Let me review briefly the provisions of our Constitution and Bill of Rights providing for trial by jury. Section 2 of Article III of the Constitution provides:

"The trial of all crimes, except in cases of impeachment, shall be by jury..."

There is no equivocation in that statement of an American citizen's right of trial by jury. There should be no misinterpretation and misapplication of it such as is proposed in H. R. 6127.

Mr. President, even as clear and specific as are the words of Section 2 of Article III of the Constitution guaranteeing trial by jury, the people of this young Nation were not satisfied with that alone. They demanded an enumeration of the rights reserved to the people in the first ten amendments which comprise the Bill of Rights. The result of their dissatisfaction was the drafting and ratification of the Sixth and Seventh Amendments.

The Sixth Amendment to the Constitution provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed..."

Also, the Seventh Amendment provides that:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

Under the present law, if the violation of a court injunction or order is willful, or if the violation is criminal in intent, the violator has the right of trial by jury. No effort to twist one type of court proceeding into another type can change the meaning of the Constitutional provisions cited above.

Without a guarantee of trial by jury in the Bill of Rights, that precious freedom might have been taken from us long before now. We have seen the efforts of every branch of the Federal Government to make such seizures of power from the States and from the people. Yes, unfortunately, we have witnessed actual seizures in our own day.



However, there can be no doubting the intent of the Founding Fathers to guarantee the right of trial by jury to every citizen.

They were familiar with the summary proceedings which have taken place under the Star Chamber and in the courts which assumed the jurisdiction of the Star Chamber as its successors. They knew of the cruelties and maltreatment imposed under Star Chamber proceedings. They intended to protect their descendants from such cruelty and maltreatment.

I wish they could have anticipated the devious proposals to be made in H. R. 6127 so that they might specifically have provided for protection against such an ill-conceived proposal.

Mr. President, the full impact of how an injunction or court order could be imposed upon persons was felt during the 1930's. During that period, an agreement was developed between employer and employees which came to be known as a "yellow-dog" contract.

Several of the great leaders of that day in the Senate were most forceful in their comments on such contracts. Their concern was even greater with reference to the injunctions and orders issued by the courts to force compliance with the contracts. I should like to quote from statements made at that time in the Senate.

On April 30, 1930, Senator Wagner of New York, author of the Wagner Act and father of the present mayor of New York City, spoke against the confirmation of Judge John J. Parker to be a Justice on the United States Supreme Court. His opposition was based on a decision rendered by Judge Parker on the Circuit Court of Appeals with reference to one of the so-called "yellow-dog" contract cases.

In the course of his argument, Senator Wagner quoted the present Senior Senator from Illinois, who was then a professor of Economics at the University of Chicago. Senator Wagner quoted the professor as declaring:

"To grant the injunction which is sought would permit employers to put a legal ring around their plants to prevent their being unionized. To grant such further protection of the law to the ability of the strong to force terms upon the weak, which the latter would not consent to were he on approximately equal terms with the other party, is to bring the boasted equality of the law into disrepute and is to inflict a heavy and unwarranted blow at the institutions which the comparatively weak have built up to protect themselves."



I cite this statement of the Senior Senator from Illinois because I believe it applies most appropriately to the proposal in H. R. 6127 which would empower the Attorney General to secure injunctions in alleged violations of the voting rights of individuals. To grant such power to the Attorney General now in voting cases would be comparable to employing the injunction as it was used in the 1930's against employees in labor disputes.

I can think of no better phraseology to describe the viciousness of using injunctions in such a manner than that attributed to the Senior Senator from Illinois by Senator Wagner: "To grant such protection of the law to the ability of the strong to force terms upon the weak,...is to bring the boasted equality of the law into disrepute."

In an address I made in the Senate in opposition to H. R. 6127 on July 11, I referred to another statement of the Senior Senator from Illinois which was contained in his book entitled The Coming of a New Party, published in 1932. On page 42 of that book he decried the effect of contempt actions without trial by jury in labor dispute cases.

He condemned the use of injunctions to prevent union activities and pointed out that such efforts would result in unions becoming "liable for contempt of court and their officials can accordingly be sentenced to jail, without a jury trial, by the judge who issued the original order."

The Senior Senator from Illinois was on the Floor at the time I made reference to his previous position on the matter of court injunctions and the right of trial by jury. I expressed the hope that he would apply the same eloquence to a plea on behalf of every citizen.

I regret that the Senior Senator from Illinois and some of my other colleagues in the Senate support a bill which would deny any citizen of a right which they have advocated for citizens who belong to labor unions.

I am convinced that if H. R. 6127 were to be enacted without a provision for trial by jury, the federal courts might declare it unconstitutional. Certainly recent decisions of the Supreme Court could lead to the logical conclusion that a denial of the right of



trial by jury, in contempt actions contemplated under this bill, would involve a denial of equal protection of the laws and denial of due process of the law.

But let me quote Senator Norris, another great Senator of the 30's, on the question of trial by jury. This is what he had to say when the Senate was debating the Norris-LaGuardia bill, noting that the section on jury trial was to have "general application" and was not confined to "labor disputes":

"The ordinary criminal laws provide that any person charged with a crime shall have the right to a jury trial. The person tried for contempt of court is tried for a criminal act. It is true this act has not been made criminal by a statute, but by the order of a judge. The judgment, however, can deprive the defendant of his liberty, can confine him to jail, and the length of the term of confinement is within the discretion of the judge who made the order. The judge becomes the legislature and, as such legislature, he makes something a crime that is not a crime under the general law. He then sits in judgment and tries the person who is charged with violating the law which he has enacted. What difference is it to the defendant, so far as his punishment is concerned, whether the law has been made by the judge or the legislature? His suffering is just as great in one case as in the other. Why should he be deprived of a jury trial when the law is made by one man instead of by the regular legislative authority?"

Mr. President, the same dangers are present in the power granted the Attorney General under Part IV of H. R. 6127 as Senator Norris objected to and fought against.

Liberty is just as dear to one citizen as to another. If the right of trial by jury was worth protecting in 1932, it is worth protecting today.

The same principle is involved. Time may alter situations but time does not alter principles. Principles stand through all the ages regardless of efforts to twist their application to meet changing situations.

One of the features of American government which has distinguished it from the governments of the rest of the world is the jury system. More than 125 years ago a young French lawyer came to this country to observe our way of life and to report on our system of government.

Alexis de Tocqueville wrote a book about his travels in the United States which he entitled Democracy in America. A chapter of that book was devoted to the right of trial by jury as practiced in this country.



Certain of his comments in that chapter are most appropriate for us to read at this time. These are his words, written more than a century and a quarter ago:

"...The jury system as it is understood in America appears to me to be as direct and as extreme a consequence of the sovereignty of the people as universal suffrage. They are two instruments of equal power, which contribute to the supremacy of the majority. All the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury. The Tudor monarchs sent to prison jurors who refused to convict, and Napoleon caused them to be selected by his agents."

Mr. President, there is a warning from the past of how monarchs attempted to control the people of England and France by the control of juries as they were then used in those countries. The words of de Tocqueville are a tribute to the system which had been developed by the United States, then a young Nation, to prevent the seizure of power which had been witnessed in older countries where democracy was a word instead of a way of life.

De Tocqueville saw the jury in America as "that portion of the Nation to which the execution of the laws is entrusted, as the legislature is that part of the Nation which makes the laws..."

Permit me to quote him further because his comments should make us pause here today and consider what is asked of us when we are asked to consider H. R. 6127.

De Tocqueville asserted:

"...Laws are always unstable unless they are founded upon the customs of a Nation; customs are the only durable and resisting power in a people..."

"The institution of the jury, if confined to criminal causes, is always in danger; but when once it is introduced into civil proceedings, it defies the aggressions of time and man. If it had been as easy to remove a jury from the customs as from the laws of England, it would have perished under the Tudors; and the civil jury did in reality at that period save the liberties of England...The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing to be judged and with the notion of right. If these two elements be removed, the love of independence becomes a mere destructive passion. It teaches men to practice equity; every man learns to judge his neighbor as he would himself be judged...The jury teaches every man not to recoil before the responsibility of his own actions and impresses him with that manly confidence without which no political virtue can exist. It invests every citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society and the part which they take in its own government..."



Mr. President, we are today facing an attack on our jury system of the same nature which de Tocqueville decried as having taken place under the Tudor monarchs of England and Napoleon in France.

Just as those rulers sought to pervert the juries to their own ends, this bill before us, H. R. 6127, would condone a perversion of the jury system by its provisions. What the Attorney General should realize is that he will not make citizens more responsible by trying to deprive them of a dear right. He will make them less responsible.

He cannot successfully twist established court procedures into fictional procedures for the sole purpose of convicting persons before they are found guilty by a jury of some wrong doing.

One of the present associate justices of the United States Supreme Court delivered an address in Denver, Colorado, on May 9 in which he dealt with the subject of trial by jury. I have previously referred to this speech by Justice Brennan, but I want to cite it again. This is what he had to say on the subject of trial by jury:

"...American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it...One has only to remember that it is still true in many States that so highly is the jury function prized, that judges are forbidden to comment on the evidence and even to instruct the jury except as the parties request instructions. The jury is a symbol to Americans that they are bosses of their government. They pay the price, and willingly, of the imperfections, inefficiencies and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of their liberties..."

Mr. President, surely the members of the Senate, who are elected directly by the people, should easily recognize the validity and strength of the theme propounded by Justice Brennan. It is the same theme which was advocated so ably by the members of this Senate in the 1930's.

I want to refer again to the debate in the Senate over the "yellow-dog" contracts. Senator Borah declared on April 28, 1930:

"We are not contending here that labor organizations can at any time employ threats, force or violence, or intimidation...They must keep within the law..."

"But over and above and beyond these interests..."

"...Is not the public...interested in striking down...all these over-reaching contracts which rob those who work of the discretion, of the liberty of choice as to how they shall conduct themselves so long as they conduct themselves lawfully."



Mr. President, the great Senator from Idaho was asking only for fair treatment, for men to have the freedom to exercise their rights under the Constitution. He was not condoning force or violence and I am not condoning it here today.

I am asking for the Senate to give the consideration which every citizen is due to receive in the application of our laws.

No citizen of this country should be subject to a "yellow-dog" contract type of injunction process. That is what H. R. 6127 embodies in its grant of extreme power to the Attorney General.

I want to conclude with the words of Senator Norris, spoken in this very chamber on May 2, 1930:

"I wonder if a suffering people, whose forefathers fought for liberty, are going to give up the idea of it in this day and age, in this civilized day, and are going to submit to injunction made law."

Mr. President, I do not believe the people of this Nation will ever submit to having their freedom deprived by injunction made law. I hope this Senate will never attempt to do a thing that is so completely out of keeping with the constitutional guarantees which we revere.

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